

AMENDED IN SENATE MAY 4, 2005
AMENDED IN SENATE APRIL 13, 2005

SENATE BILL

No. 417

Introduced by Senator Ortiz

February 17, 2005

An act to add Section 734 to the Business and Professions Code, and to add Section 1371.371 to the Health and Safety Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 417, as amended, Ortiz. Payment of provider claims.

(1) Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. Under the act, a plan is required to reimburse within a specified timeframe, an uncontested claim submitted to it by a provider.

This bill would require the department to review complaints by providers concerning the payment practices of a health care service plan or an entity with which the plan contracts for payment of claims, to determine if the practice constitutes an unfair payment practice, as defined. The bill would require the director of the department to assess a monetary penalty for the commission of an unfair payment practice.

(2) Existing law makes certain acts by health care professionals unprofessional conduct, including the failure of a physician and surgeon or a dentist to refund a duplicate payment he or she received for services provided to a patient.

This bill would ~~make it unprofessional conduct for a healing arts practitioner to engage, beginning on July 1, 2006, prohibit a hospital-based provider from engaging~~ in a pattern of billing patients for services without first submitting a claim to their health care

~~coverage service plan or health insurer, if the licensed provider knows or reasonably should have known that the patients has health care coverage for those services from a plan or insurer. The bill would also make it unprofessional conduct for require these practitioners to fail to notify a patient, as specified, that the cost of services may be reimbursed covered by the patient's health care coverage plan.~~

The bill would make a violation of these provisions subject to the assessment of a civil penalty in an action brought by the practitioner's licensing board.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 734 is added to the Business and
2 Professions Code, to read:

3 734. (a) ~~It shall constitute unprofessional conduct for a A~~
4 ~~person licensed under this division to who is a hospital-based~~
5 ~~provider of services shall not engage in a pattern of billing a~~
6 ~~patient who patient for covered services if the licensee knows or~~
7 ~~reasonably should have known that the patient is an enrollee of a~~
8 ~~health care service plan; or an insured under a health insurance~~
9 ~~policy, or who has any other type of health care coverage, for~~
10 ~~amounts in excess of any applicable copayments, deductibles, or~~
11 ~~coinsurance, unless the person licensee has first billed the~~
12 ~~patient's health care service plan; or health insurer, or other~~
13 ~~health care coverage plan, and it has health insurer, and it has~~
14 ~~denied payment of all or part of the claim, or the plan has failed~~
15 ~~to pay the claim as specified in Section 1371 or 1371.35 of the~~
16 ~~Health and Safety Code.~~

17 (b) ~~It shall constitute unprofessional conduct for a person A~~
18 ~~person licensed under this division to fail to shall include the~~
19 ~~following in any billing statement for covered services or~~
20 ~~statement for covered services of charges that he or she sends to~~
21 ~~a patient who the licensee knows or reasonably should have~~
22 ~~known is an enrollee of a health care service plan; or an insured~~
23 ~~under a health insurance policy, or who has any other type of~~
24 ~~health care coverage plan, if the charges are in excess of any~~
25 ~~applicable copayments, deductibles, or coinsurance:~~

1 (1) A prominent notice that the services being billed for may
2 be covered under the patients's health care coverage plan.

3 (2) A statement that the patient may contact the Department of
4 Managed Health Care HMO Help Center for assistance if the
5 patient believes he or she has been billed incorrectly and the
6 toll-free telephone number for the HMO Help Center.

7 (c) *A person licensed under this division who violates this*
8 *section may be cited and assessed an administrative fine*
9 *pursuant to the provisions of Section 125.9. No citation shall be*
10 *issued and no fine shall be assessed upon the first complaint*
11 *against a licensee for a violation of this section. Upon the second*
12 *and subsequent complaint against a licensee for the violation of*
13 *this section, a citation may be issued and an administrative fine*
14 *may be assessed. Notwithstanding any other provision of law, the*
15 *remedy described in this subdivision constitutes the exclusive*
16 *remedy for a violation of this section.*

17 (d) *A person who violates this section shall refund to a patient*
18 *all payments collected in violation of the section.*

19 (e) *This section shall not apply to services provided to a*
20 *patient by an out of network provider if the patient knowingly*
21 *chooses to receive services from an out of network provider.*

22 (f) *A noncontracting provider who bills a health care service*
23 *plan in accordance with the requirements of this section shall not*
24 *be deemed to have an implied or actual contract with the health*
25 *care service plan.*

26 (g) This section shall not affect any other protections under
27 state or federal law afforded to an enrollee of a health care
28 service plan, an insured under a health insurance policy, or to a
29 person who has any other type of health care coverage plan.

30 (h) *This section shall become operative on July 1, 2006.*

31 SEC. 2. Section 1371.371 is added to the Health and Safety
32 Code, to read:

33 1371.371. (a) The department shall review individual
34 complaints from providers concerning the payment practices of a
35 health care service plan or of an entity that contracts with the
36 plan to pay claims submitted to the plan by providers. The
37 department may take an enforcement action based on a single
38 commission of an unfair payment practice, but shall prioritize the
39 complaints it receives based on their severity and seriousness.

(b) (1) Upon a determination that a health care service plan has engaged in an unfair payment practice, the director shall order the plan to pay to the provider *up to* three times the amount that has been determined to have been inappropriately withheld and shall impose any other remedy authorized under this chapter sufficient to deter the future commission of an unfair payment practice.

(2) For purposes of this section, an unfair payment practice shall include a payment practice that results in any of the following:

(A) A failure to *correctly* pay the claim as specified in Section 1371 or 1371.35.

(B) A failure to pay statutory interest and penalties as specified in Section 1371 or 1371.35.

(C) A failure to comply with Section 1371.1, 1371.2, 1371.36, 1371.8, or 1395.6.

(c) A health care service plan may not delegate any statutory liability under this section.

(d) The enforcement remedies provided in this section are not exclusive and shall not limit or preclude a person from exercising any other available criminal, civil, or administrative remedy.

(e) The penalties applicable under this section shall not preclude, suspend, affect, or impact any other duty, right, responsibility, or obligation under a statute or under a contract between a health care service plan and a provider.

(f) Nothing in this section shall authorize the department to establish rates or charges for services provided to subscribers and enrollees.